

1   **Robert B. Miller, OSB No. 960068**  
2   **[bobmiller@kilmerlaw.com](mailto:bobmiller@kilmerlaw.com)**  
3   KILMER, VOORHEES & LAURICK, P.C.  
4   732 N.W. 19th Avenue  
5   Portland, Oregon 97209-1302  
6   Telephone: (503) 224-0055  
7   Fax: (503) 222-5200

## 5 Attorneys for Plaintiff

6

7

10 BOARD OF TRUSTEES OF THE WESTERN  
11 STATES OFFICE AND PROFESSIONAL  
EMPLOYEES PENSION FUND.

12 Plaintiff,

13 vs.

14 INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL 483,

Defendant.

Case No.

**COMPLAINT TO VACATE  
ARBITRATOR'S AWARD ON  
WITHDRAWAL LIABILITY**

**(Pursuant to 29 U.S.C. § 1001 *et seq.*)**

17 Plaintiff The Board of Trustees of the Western States Office and Professional Employees  
18 Pension Fund (the “Pension Fund”) files this action against Defendant International Brotherhood  
19 of Electrical Workers Local 483 (the “Employer”) to vacate the Arbitrator’s Final Award dated  
20 January 6, 2020 (“Award”), attached as Exhibit A, and alleges as follows:

21 1. On August 23, 2018, the Pension Fund sent the Employer a Notice of Withdrawal  
22 Liability Assessment. The Employer admitted that it owed withdrawal liability, commenced  
23 timely payments in the amount stated in the assessment, but contended that the Pension Fund  
24 calculated the withdrawal liability payments under the assessment in error and initiated a timely  
25 demand for arbitration. On January 6, 2020, the Arbitrator issued his Award, directing the  
26 Pension Fund to recalculate the Employer's withdrawal liability payments. The Pension Fund

1 contends that the Arbitrator erred in applying the law governing the computation of the  
2 Employer's withdrawal liability payments and files this action to vacate the Award.

3 **JURISDICTION**

4 2. This Court has jurisdiction pursuant to 29 U.S.C. § 1401(b)(2), § 1451(a)(1)  
5 and § 1451(c) because this is a civil action by plan fiduciaries for appropriate legal relief and,  
6 more specifically, an action for an Order vacating an award in Arbitration under the  
7 Multiemployer Pension Plan Amendment Act ("MPPAA"), a section of the Employee  
8 Retirement Income Security Act ("ERISA").

9 **VENUE**

10 3. Venue is proper in this Court pursuant to 29 U.S.C. § 1451(d) because the plan is  
11 administered in Portland, Oregon.

12 **ALLEGATIONS OF FACT**

13 4. The Pension Fund is a multiemployer pension fund maintained and administered  
14 to provide retirement benefits to qualified labor employees. The Pension Fund is established and  
15 maintained pursuant to ERISA.

16 5. Effective January 1, 2008, the Employer entered into a collective bargaining  
17 agreement ("CBA") with the Office and Professional Employees International Union Local 23  
18 (the "Union").

19 6. The CBA obligated the Employer to make contributions to the Pension Fund at a  
20 specified rate for each compensable hour worked by the Employer's employees.

21 7. In 2009, the Pension Plan notified all participating employers, including the  
22 Employer here, that the Pension Fund was in critical status, that each participating employer was  
23 obligated to pay a statutory surcharge under the Pension Protection Act of 2006 (the "PPA"), and  
24 that the Pension Fund had adopted a rehabilitation plan.

25

26

1           8.       The Pension Plan fell into critical status in 2009 and adopted a rehabilitation plan.

2       The Employer did not agree to the contribution schedule in the rehabilitation plan and, instead,  
3       continued to pay the surcharge.

4           9.       The Employer withdrew from the Pension Fund in 2016.

5           10.      The Pension Fund served the Employer with the Notice of Assessment of  
6       Withdrawal Liability and included the schedule of payments required under ERISA, and those  
7       payments were calculated using the highest contribution rate at which the Employer had an  
8       obligation to contribute under the plan pursuant to 29 U.S.C. § 1399(c)(1)(C)(i).

9           11.      The Employer elected to enter into collective bargaining agreements with its  
10      employees Union in and after 2010.

11          12.      In those collective bargaining agreements, the Employer agreed to make  
12      supplemental contributions in order to contribute at a rate consistent with those published by the  
13      Pension Fund in furtherance of the rehabilitation plan.

14          13.      In 2014 Congress passed the Multiemployer Pension Reform Act, which  
15      provided, in pertinent part, that supplemental contribution rates for plan years beginning after  
16      December 31, 2014 were excluded from the highest contribution rate for the purpose of  
17      computing withdrawal liability payments under 29 U.S.C. § 1399(c)(1)(C)(i).

18          14.      The Fund computed the Employer's withdrawal liability payment based on the  
19      contribution rate agreed to in the collective bargaining agreement between the Employer and its  
20      employees' Union for the 2013 plan year.

21          15.      The Arbitrator concluded, in error, that the Fund erred in including the pre-MPRA  
22      supplemental contributions in computing the Employer's withdrawal liability payment.

23          16.      The Arbitrator's Award is unprecedented. No court and no arbitrator has held that  
24      a pre-MPRA supplemental contribution can be excluded from the computation of an employer's  
25      withdrawal liability payment. Exhibits B and C, attached to this Complaint, are Arbitration  
26      Awards issued after the Award under review here in January 2020. The Arbitrator decided the

1 same legal question raised by the Employer here and the Arbitrator in each issued awards that  
2 directly contradict, and expressly disagree with, the Arbitrator's Award in this matter.

3 **CLAIM FOR RELIEF**

4 17. The Arbitrator erred in construing ERISA § 4219(c)(1)(C)(i), 29 U.S.C.  
5 § 1399(c)(1)(C)(i), to conclude that that the pre-MPRA supplemental contributions could not be  
6 included in the computation of the statutory withdrawal liability payments as a matter of law.

7 18. The Court reviews the Arbitrator's conclusions of law in a proceeding under  
8 29 U.S.C. § 1401(b)(2) under the *de novo* standard of review. *Trustees of Amalgamated Ins.*  
9 *Fund v. Geltman Indus., Inc.*, 784 F.2d 926, 928–29 (9<sup>th</sup> Cir. 1986).

10 19. The Pension Fund is entitled to judgment vacating the Arbitrator's Award.

11 **PRAYER**

12 WHEREFORE, the Pension Fund respectfully requests that this Court vacate the  
13 Arbitrator's January 6, 2020 Award, followed by a determination on the Pension Fund's petition  
14 for attorney fees to be submitted following a decision on the merits.

15 DATED this 28<sup>th</sup> day of January, 2020.

16 KILMER VOORHEES & LAURICK, P.C.

17 

---

*/s/ Robert B. Miller*  
18 Robert B. Miller, OSB No. 960068  
19 [bobmiller@kilmerlaw.com](mailto:bobmiller@kilmerlaw.com)  
20 Attorneys for Plaintiff  
21  
22  
23  
24  
25  
26

I:\10332\0009\Pleadings\Complaint to Vacate Arb Award 2020-0128.docx